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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
(WESTERN DIVISION)

Case No. 2:11-cv-7774-SVW

**PLAINTIFF'S OPPOSITION TO  
REDROCK NOHO, LLC'S MOTION  
FOR SUMMARY JUDGMENT**

Hearing: Oct. 22, 2012, 1:30 p.m.  
Judge: Hon. Stephen V. Wilson  
Courtroom: Number 6, 2<sup>nd</sup> Floor

Complaint Filed: Sept. 20, 2011  
Trial Date: Nov. 27, 2012

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## INTRODUCTION

2 In her Third Amended Complaint (Dkt. 141), Plaintiff Mei Ling asserts  
3 reasonable accommodation claims against Defendant RedRock NoHo  
4 Residential, LLC (“RedRock”) pursuant to the Rehabilitation Act, the Fair  
5 Housing Act, the California Fair Employment and Housing Act (“FEHA”),  
6 and the California Disabled Persons Act (“CDPA”), based on RedRock’s  
7 refusal to rent her a one-bedroom apartment at an affordable rate in place of  
8 one of the studio units that RedRock rents at affordable rates pursuant to its  
9 affordable housing program at The Lofts, a multi-family housing development  
10 located in North Hollywood. RedRock’s Motion for Summary Judgment  
11 (Dkt. 149) rests on just two assertions: that Ms. Ling’s requested  
12 accommodation is not necessary to afford her an equal housing opportunity  
13 and is not reasonable because it would impose an undue burden on RedRock.  
14 Because RedRock has failed to establish the absence of any genuine disputed  
15 facts material to these claims, its Motion for Summary Judgment must be  
16 denied.

17 Ms. Ling is disabled. She is restricted to a wheelchair, requires  
18 assistance with personal care and day-to-day tasks, and cannot earn an income  
19 because of her disability. In order to have equal access to the use and  
20 enjoyment of housing, Ms. Ling needs a dwelling unit with sufficient space  
21 and design features that will allow her to maneuver in her wheelchair, install  
22 and store adaptability equipment, and provide adequate privacy for herself and  
23 her live-in caregiver.

24 Since 2007, Ms. Ling has sought to rent an apartment unit at The Lofts  
25 through the property's affordable housing program. When she finally reached  
26 the top of The Loft's affordable housing waitlist in 2009, she requested that  
27 The Lofts make an exception to its affordable housing policy, under which it  
28 elected to include only three studio unit types while excluding the one-

1 bedroom Pantages units. Ms. Ling asked that RedRock rent her a Pantages  
2 unit at an affordable rate, in order to accommodate her specific accessibility  
3 needs. The Lofts refused, and Ms. Ling has therefore never been able to use  
4 and enjoy a dwelling unit at The Lofts.

5 The Rehabilitation Act, Fair Housing Act, FEHA, and the CDPA all  
6 impose an obligation on RedRock to alter policies that may also be barriers to  
7 nondisabled persons in order to provide equal housing access to persons with  
8 disabilities such as Ms. Ling. *Giebeler v. M & B Assocs.*, 343 F.3d 1143, 1151  
9 (9th Cir. 2003). “[R]easonable accommodations can function to adjust for  
10 special needs that flow from the inability of disabled residents to meet  
11 otherwise applicable financial requirements.” *Id.*

12 RedRock has not established the absence of genuine disputes  
13 concerning the elements of Mr. Ling’s reasonable accommodation claim. A  
14 reasonable jury could easily credit Ms. Ling’s evidence that a one-bedroom  
15 Pantages-style unit would meet more of her specific accessibility needs than  
16 one of the studio units. Such a jury could also find that without a Pantages  
17 unit rented at a rate she can afford, Ms. Ling will be denied an opportunity to  
18 use and enjoy housing at The Lofts. That same reasonable jury could also find  
19 that the requested accommodation is reasonable and would not impose any  
20 undue burden on RedRock, and RedRock has not presented evidence showing  
21 that granting the requested accommodation would fundamentally alter the  
22 nature of its affordable housing program or that it would constitute a  
23 significant financial hardship for RedRock.

24 For these reasons, and as set forth below, RedRock has not met its  
25 burden as the party moving for summary judgment to establish the absence of  
26 any genuine disputes over facts material to Ms. Ling’s reasonable  
27 accommodation claims. Ms. Ling thus respectfully requests that the Court  
28 deny the Motion and allow her to present her reasonable accommodation claim

1 to a jury.<sup>1</sup>

## 2 FACTUAL OVERVIEW

3 Plaintiff Mei Ling suffers from spinal conditions including spinal  
4 stenosis and spondylosis, which is a painful condition resulting from the  
5 degeneration of the spine's intervertebral disks. Ling Dep. 8:13-15, 8:18-20,  
6 8:22-23.<sup>2</sup> She has been non-ambulatory and has used a wheelchair since  
7 2006. *Id.* 10:16-21, 10:24-11:2.

8 Because of her mobility impairment, Ms. Ling requires assistance with  
9 personal care and other routine tasks. Ling Dep. 20:23-24, 25:8-23, 26:8-13,  
10 29:24-25, 40:23-25, 41:10-19, 45:1-6, 45:14-23. Her physical disability  
11 currently prevents her from obtaining employment. Ling Decl. ¶ 8. She  
12 cannot earn an income because of her disability and subsists on a small  
13 monthly stipend from Los Angeles County's General Relief program, in the  
14 amount of \$221. Because of her financial circumstances, Ms. Ling cannot  
15 afford to live in market-rate housing. Ling Dep. 179:5-13, 179:19-21; Ling  
16 Decl. ¶ 8. Ms. Ling therefore requires an affordable dwelling unit that is also  
17 wheelchair-accessible.

18 Ms. Ling became homeless in 2006. Ling Dep. 30:10-18. Since that  
19 time, she has sought to obtain affordable, wheelchair-accessible housing in  
20 CRA-supported buildings located in various parts of the City. Ling Decl. ¶¶  
21 15-17, 26.

22 In April 2007, Ms. Ling obtained a Housing Choice Voucher (formerly  
23 denominated and still commonly called a Section 8 voucher), administered by  
24 the Housing Authority of the City of Los Angeles ("HACLA"). Ms. Ling's

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25  
26 <sup>1</sup> This Opposition also responds to Legacy Partners Residential, Inc.'s  
27 ("Legacy") Motion for Summary Judgment on Ms. Ling's reasonable  
accommodation claims against Legacy. (See Dkt. 150-I at 5.)

28 <sup>2</sup> The cited excerpts from Ms. Ling's deposition are attached as Exhibit 24 to  
the Declaration of Mei Ling.

1 Housing Choice Voucher currently provides her approximately \$1,400 per  
2 month to apply to the rental of a two-bedroom apartment unit at The  
3 Piedmont. Ling Dep. 62:7-15; Ling Decl. ¶ 9.

4 Ms. Ling's current dwelling unit is not fully accessible to her. Among  
5 other barriers, she cannot use the shower, cannot use the toilet without  
6 assistance, and cannot utilize all features of the kitchen. Ling Dep. 34:17-23,  
7 37:1-11, 37:14-43:3. In addition, public transportation opportunities to and  
8 from The Piedmont are limited and difficult for Ms. Ling to access. Ling  
9 Decl. ¶ 25.

10 RedRock is the owner of The Lofts, a multi-family housing  
11 development located in North Hollywood. McCarter Decl. (Dkt. 149-5) ¶ 2.  
12 The Community Redevelopment Agency of Los Angeles ("CRA") allocated  
13 federal funding to The Lofts' developer. *See* HUD Compliance Review, App.  
14 3 (attached as Ex. A to Ms. Ling's concurrently filed Request for Judicial  
15 Notice);<sup>3</sup> McCarter Decl. (Dkt. 149-5) ¶ 6; Ex. 23 to Ling Decl.

16 In 2007, Ms. Ling applied for tenancy at The Lofts through the  
17 development's affordable housing program. Ling Decl. ¶ 30; Ling Dep.  
18 63:22-25; Ling Decl. Ex. 22. The Lofts limits its affordable housing program  
19 to studio units (Greek, Mayan, and Kodak units). McCarter Decl. ¶ 4 & Ex.  
20 A; *see also* Nichols Decl. (Dkt. 149-4) ¶¶ 3, 5-6. The Lofts also has a one-  
21 bedroom model called a Pantages unit, but it does not offer any Pantages units  
22 at affordable, or below-market rates. Nichols Decl. ¶ 6. The Greek studio  
23 units have 580 square feet; the Mayan studio units have 750 square feet; the  
24 Kodak studio units and the Pantages one-bedroom units have 930 square feet.  
25 Ex. C to Kim Report (Dkt. 149-3 at 51-55).

26 Ms. Ling reached the top of the affordable housing waitlist for The

27 \_\_\_\_\_  
28 <sup>3</sup> As shown in Exhibit B to the Request for Judicial Notice, these findings  
became final when no party sought review.

1      Lofts in December 2009, and at that time, The Lofts offered her tenancy in a  
2      Greek-style studio unit. Ling Dep. 84:9-22; Ex. 21 to Ling Decl.; RedRock  
3      Statement of Uncontroverted Facts (Dkt. 149-6) ¶ 12.

4              Because Ms. Ling requires a wheelchair and a live-in caregiver, she  
5      needs more space and privacy than any of The Lofts' studio units would  
6      afford. Ling Dep. 86:22-87:3, 87:10-17. In addition, the layout and floor  
7      space of the studio units at The Lofts are inadequate for Ms. Ling to install and  
8      store bulky adaptability equipment that would allow her to use the shower. *Id.*  
9      57:6-22, 88:17-18. Ms. Ling also needs grab bars on both sides of the toilet,  
10     but the studio units only have walls on one side of the toilet. Ling Dep. 75:22-  
11     25; Kim Report at 14.

12              Because the Lofts' studio units do not meet Ms. Ling's specific  
13     accessibility needs, she has repeatedly requested that The Lofts allow her to  
14     rent a Pantages unit at an affordable rate, instead of one of the studio units  
15     designated in The Lofts' affordable housing program, as a reasonable  
16     accommodation for her disability; each such request has been denied. Ling  
17     Decl. ¶¶ 30-35, 39-40, 42, 46, 51, 60-64 & Ex. 21 at PL 35; Ling Dep. 64:1-7;  
18     64:13-15.

19              HACLA, which administers Ms. Ling's Housing Choice Voucher, has  
20     recognized her medical requirement of a unit larger than a studio unit in  
21     issuing her a Voucher for the rental of a two-bedroom unit. Ling Dep. 62:7-  
22     18; Ling Decl. ¶ 8.

23              When The Lofts offered Ms. Ling an affordable studio unit in December  
24     2009, she renewed her request that she be allowed to rent a one-bedroom  
25     Pantages unit at an affordable rate as a reasonable accommodation for her  
26     disability. *See* Ex. 21 to Ling Decl. at PL 35. The Lofts denied the request.  
27     *Id.* at PL 39-44.

28              In January 2012, U.S. Department of Housing and Urban Development

1 (“HUD”) released an exhaustive Compliance Review. In the Compliance  
 2 Review (attached to Ms. Ling’s concurrently filed request for judicial notice as  
 3 Exhibit A), HUD found that RedRock had failed to provide housing  
 4 opportunities to persons with disabilities in a sufficient range of sizes and with  
 5 a sufficient range of amenities to ensure that prospective tenants with  
 6 disabilities are not denied an opportunity to rent because of an absence of  
 7 accessible, affordable units. *Id.* at 6. HUD determined that all of the  
 8 affordable units at the Lofts are studio units and that none of the one-bedroom  
 9 units is included. *Id.* at Appendix 5, p. 14. HUD’s compliance review  
 10 furthermore concluded that *none* of the units designated as accessible at The  
 11 Lofts complies with the accessibility requirements of Section 504. *Id.* at 14-35  
 12 (describing widespread accessibility violations in the units that have been  
 13 designated accessible at The Lofts). HUD further found that accessible units  
 14 were not distributed among the affordable units at The Lofts and that The  
 15 Lofts conducted a single lottery that did not take into account individuals with  
 16 disabilities. *Id.* at 6, 8.

17 RedRock’s expert conducted an independent accessibility review of The  
 18 Lofts and likewise concluded that The Lofts is not in compliance with many  
 19 UFAS requirements. Kim Report at 4-13.

20 In its July 6, 2012 Order, the Court dismissed Ms. Ling’s claims against  
 21 RedRock except to the extent that Ms. Ling alleges that RedRock denied her  
 22 requests to substitute a Pantages unit for one of the affordable studio units, as  
 23 a reasonable accommodation. (Dkt. 109 at 2-4.) Ms. Ling’s remaining claims  
 24 against Legacy are therefore based on the denial of the requested  
 25 accommodation of allowing Ms. Ling to rent a Pantages unit through The  
 26 Lofts’ affordable housing program, under the Rehabilitation Act, 29 U.S.C. §  
 27 794; the Fair Housing Act, 42 U.S.C. § 3604(f)(3); FEHA, Cal. Gov’t Code  
 28 Sec. 12927(c)(1); and the CDPA, Cal. Civ. Code Sec. 54.3.

## LEGAL STANDARD

2 Summary judgment should be denied unless the record “shows that  
3 there is no genuine dispute as to any material fact and the movant is entitled to  
4 judgment as a matter of law.” Fed. R. Civ. P. 56(a). A material fact is one  
5 that could “affect the outcome of the suit under the governing law.” *Anderson*  
6 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A “genuine issue” exists “if  
7 the evidence is such that a reasonable jury could return a verdict for the  
8 nonmoving party.” *Id.*

At the summary judgment stage, the Court may not make credibility determinations or weigh conflicting evidence and must draw all inferences “in the light most favorable to the nonmoving party.” *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630–31 (9th Cir.1987); *see also Hunt v. Cromartie*, 526 U.S. 541, 552 (1999) (holding that at summary judgment “the nonmoving party’s evidence ‘is to be believed, and all justifiable inferences are to be drawn in that party’s favor’” (internal quotation marks and brackets omitted)).

17        The moving party bears the burden of demonstrating the absence of a  
18    genuine issue of material fact for trial, with evidence that would be admissible.  
19    *Anderson*, 477 U.S. at 256; Fed. R. Civ. P. 56(c)(1), (4). Only if the moving  
20   party makes this showing does the burden shift to the non-moving party to  
21   identify “specific facts showing that there is a genuine issue for trial.” *Pom*  
22   *Wonderful LLC v. Welch Foods, Inc.*, 737 F. Supp. 2d 1105, 1108 (C.D. Cal.  
23   2010) (internal quotation marks omitted).

24 The issue of whether a requested accommodation is reasonable is highly  
25 fact-intensive and almost always presents a triable issue of fact for the jury.  
26 See, e.g., *Barnett v. U.S. Air, Inc.*, 228 F.3d 1105, 1113 n.2 (9th Cir. 2000),  
27 vac'd on other grounds by 535 U.S. 391 (2002); *United States v. Cal. Mobile*  
28 *Home Park Mgmt. Co.*, 29 F.3d 1413, 1418 (9th Cir. 1994) ("Mobile Home

1      $I'$ ). If there are mixed questions of law and fact, summary judgment is not  
2     appropriate where the factual issues are genuinely disputed. *Posey v. Lake*  
3     *Pend Oreille Sch. Dist. No. 84*, 546 F.3d 1121, 1123 (9th Cir. 2008).

## ARGUMENT

## I. Elements of a Reasonable Accommodation Housing Claim

6        The Fair Housing Act includes within the definition of unlawful housing  
7 discrimination “a refusal to make reasonable accommodations in rules,  
8 policies, practices, or services, when such accommodations may be necessary  
9 to afford such person equal opportunity to use and enjoy a dwelling.” 42  
10 U.S.C. § 3604(f)(3)(B). This provision codified into the Fair Housing Act the  
11 reasonable accommodation requirements of Section 504 of the Rehabilitation  
12 Act. *See Giebeloer*, 343 F.3d at 1148 (citing H.R. Rep. No. 100-711, at 25, 28  
13 (1988)). The Ninth Circuit has therefore instructed that courts should apply  
14 these federal laws similarly in resolving reasonable accommodation housing  
15 claims. *Id.* at 1149 (“The concept that policies and practices must be modified  
16 in some instances to accommodate the needs of the disabled is common to all  
17 three statutory schemes [the Fair Housing Act, the Rehabilitation Act, and the  
18 Americans with Disabilities Act].”).<sup>4</sup>

19 FEHA similarly includes within the statutory definition of housing  
20 discrimination the “refusal to make reasonable accommodations in rules,  
21 policies, practices, or services when these accommodations may be necessary  
22 to afford a disabled person equal opportunity to use and enjoy a dwelling.”

<sup>24</sup> Section 504 of the Rehabilitation Act requires the additional element that the defendant be a recipient of triggering federal funding. See 29 U.S.C. § 794; *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1067 (9th Cir. 2010). RedRock does not argue in its moving papers that it is exempt from Section 504 of the Rehabilitation Act. Ms. Ling therefore assumes that RedRock does not intend to dispute this element on summary judgment. Should RedRock assert in its reply that it is exempt from Section 504, Ms. Ling respectfully reserves the right to submit a surreply on this issue.

1 Cal. Gov't Code § 12927(c). Courts have likewise interpreted the CDPA as  
 2 prohibiting the denial of a request for a reasonable accommodation. *See*  
 3 *Rodriguez v. Morgan*, 2012 WL 253867, at \*5 (C.D. Cal. Jan. 26, 2012).<sup>5</sup>

4 The Ninth Circuit has articulated four elements for proving a reasonable  
 5 accommodation housing claim: (1) the plaintiff has a disability; (2) the  
 6 defendant knew or reasonably should have known of the disability; (3)  
 7 accommodation of the disability may be necessary to afford the plaintiff an  
 8 equal opportunity to use and enjoy the dwelling; and (4) the defendant refused  
 9 to make the accommodation. *See Giebeler*, 343 F.3d at 1147 (citing *United*  
 10 *States v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1380 (9th Cir.  
 11 1997) (“*Mobile Home III*”)); *see also id.* at 1149 (stating that elements of  
 12 reasonable accommodation analysis under the Fair Housing Act are “borrowed  
 13 from the caselaw interpreting the Rehabilitation Act” (internal quotation marks  
 14 omitted)). In addition, the court must determine whether the accommodation  
 15 is reasonable. *Id.* at 1156; *DuBois v. Ass'n of Apartment Owners of 2987*  
 16 *Kalakaua*, 453 F.3d 1175, 1179 (9th Cir. 2006).

17 In its moving papers, RedRock does not dispute Ms. Ling’s ability to  
 18 establish the first, second, and fourth elements of the reasonable  
 19 accommodation analysis. Thus, the only disputed issues for purposes of  
 20 RedRock’s Motion for Summary Judgment are whether the accommodation  
 21 requested by Ms. Ling may be necessary to afford her an equal opportunity to  
 22 use and enjoy a dwelling at The Lofts and whether the requested  
 23 accommodation is reasonable. Because the record would support a reasonable  
 24 jury’s finding that Ms. Ling’s requested accommodation is both necessary to

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25  
 26 <sup>5</sup> The protections of FEHA are even broader than that of the federal Fair  
 27 Housing Act. *See, e.g., Hous. Rights Ctr. v. Sterling*, 404 F. Supp. 2d 1179,  
 28 1194 (C.D. Cal. 2004); *Auburn Woods I Homeowners Ass'n v. Fair*  
*Employment & Hous. Comm'n*, 121 Cal. App. 4th 1578, 1591 (2004) (“[T]he  
 FHA provides a minimum level of protection that FEHA may exceed.”).

1 afford her an equal opportunity to use and enjoy a dwelling unit at The Lofts  
 2 and reasonable, RedRock's Motion for Summary Judgment must be denied.

3 **II. RedRock Has Not Established the Absence of Genuine Disputes as  
 4 to Whether Plaintiff's Requested Accommodation Is Necessary to  
 Afford Her an Equal Housing Opportunity at The Lofts**

5 RedRock contends that it has no duty to grant Ms. Ling's requested  
 6 accommodation—to be allowed to rent a one-bedroom Pantages unit at an  
 7 affordable rate in place of the studio units included in RedRock's affordable  
 8 housing program—because a Pantages unit is allegedly not necessary to  
 9 provide her an equal opportunity to live at The Lofts.

10 An accommodation is necessary if, in the absence of the  
 11 accommodation, the plaintiff would be denied an equal opportunity to use and  
 12 enjoy a dwelling compared to a person without disabilities. Courts often  
 13 frame this analysis in terms of causation, asking whether there is a causal  
 14 connection between the plaintiff's injury (the denial of an equal housing  
 15 opportunity) and the policy or practice to which the accommodation is sought.  
 16 See, e.g., *Giebeler*, 343 F.3d at 1155-56 (explaining that an accommodation is  
 17 “necessary” if the plaintiff would otherwise be denied an equal opportunity to  
 18 enjoy housing, or in other words if there is a “causal link between defendants’  
 19 policy and the plaintiffs’ injury”); *McGary v. City of Portland*, 386 F.3d 1259,  
 20 1267 (9th Cir. 2004) (similar).<sup>6</sup>

21 This inquiry is “highly fact-specific, requiring case-by-case  
 22 determination.” *Mobile Home I*, 29 F.3d at 1418; see also *Wong v. Regents of  
 23 the Univ. of Cal.*, 192 F.3d 807, 818 (9th Cir. 1999) (inquiry “depends on the

24 <sup>6</sup> RedRock asserts, relying on out-of-circuit authority, that Ms. Ling must  
 25 demonstrate a “direct linkage” to the equal opportunity or a “direct  
 amelioration of a disability’s effect.” RedRock Mem. (Dkt. 149-1) at 8 (citing  
 26 *Wis. Cnty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737 (7th Cir. 2006);  
*Matarese v. Archstone Pentagon City*, 761 F. Supp. 2d 346 (E.D. Va. 2011)).  
 27 To the extent RedRock asserts a higher burden for establishing a causal  
 connection than applies in this Circuit, these authorities are inapposite.  
 28 *Giebeler* and *McGary* articulate the applicable standard in this Circuit.

1 individual circumstances of each case” and “requires a fact-specific,  
 2 individualized analysis of the disabled individual’s circumstances and the  
 3 accommodations that might allow him to meet the program’s standards”).

4       In *Giebeler*, the court held that the requested accommodation, an  
 5 exception to the apartment owner’s financial qualifications policy, was  
 6 necessary because the plaintiff’s disability prevented him from being  
 7 financially self-sufficient. *Id.* at 1150-55, 1158. A necessary accommodation  
 8 may in some circumstances “include the obligation to alter policies that can be  
 9 barriers to nondisabled persons as well. . . . [R]easonable accommodations can  
 10 function to adjust for special needs that flow from the inability of disabled  
 11 residents to meet otherwise applicable financial requirements.” *Id.* at 1151. In  
 12 *Giebeler* found that an adjustment to the owner’s “method of judging financial  
 13 responsibility would aid [the plaintiff] in obtaining an apartment he could  
 14 otherwise not inhabit because of his disability” would provide an equal  
 15 opportunity that the plaintiff would otherwise be denied because of the causal  
 16 connection between his disability and his poverty. *Id.*

17       Likewise in *McGary*, the Ninth Circuit recognized that where a  
 18 plaintiff’s “earning ability is impaired by disability,” a housing policy or  
 19 practice that imposes a financial barrier may deny the plaintiff an equal  
 20 housing opportunity. *See* 386 F.3d at 1263-64 (holding that an  
 21 accommodation is “necessary” within the meaning of § 3604(f)(3)(B) if the  
 22 plaintiff’s “use and enjoyment of [her] home[] [are] impaired by financial  
 23 burdens that the defendants refused to mitigate through accommodation”).

24       Similarly here, the requested accommodation to The Lofts’ affordable  
 25 housing policy is necessary to provide Ms. Ling with an equal opportunity for  
 26 tenancy compared to otherwise similarly situated applicants for affordable  
 27 housing at The Lofts who do not have a disability. Without the requested  
 28 accommodation, Ms. Ling cannot participate in the affordable housing

1 program that is available to other applicants without disabilities because (1)  
 2 the affordable studios do not meet Ms. Ling's specific accessibility needs, *see*  
 3 *supra*,<sup>7</sup> and (2) as in *Giebeler* and *McGary*, Ms. Ling's disability prevents her  
 4 from working and earning an income that would otherwise allow her to pay  
 5 for a market-rate Pantages unit, Ling Decl. ¶¶ 8-9. Ms. Ling's evidence would  
 6 support a jury's finding of a causal link between her disability and the need for  
 7 the requested accommodation in order to enjoy an equal opportunity to  
 8 participate in The Lofts' affordable housing program. *See Giebeler*, 343 F.3d  
 9 at 1147, 1155; *see also* Dkt. 69 at 10-11 (finding that plaintiff alleged  
 10 adequate facts to show a causal link); *Bentley v. Peace & Quiet Realty 2 LLC*,  
 11 367 F. Supp. 2d 341, 346-47 (E.D.N.Y. 2005) (holding that plaintiff's  
 12 requested accommodation to move to more expensive unit while continuing to  
 13 pay current monthly rate was necessary to afford plaintiff the opportunity to  
 14 use and enjoy her dwelling, where the reason for the requested transfer was  
 15 directly related to her handicap). A reasonable jury could therefore find from  
 16 the evidence that by limiting its affordable housing program to studio units,  
 17 RedRock is denying Ms. Ling an equal opportunity to use and enjoy a  
 18 dwelling at The Lofts.

19 In support of its contention that the studio units are equally accessible to  
 20 Ms. Ling, RedRock relies on the report by Christy Kim, in which Ms. Kim  
 21 opines that Ms. Ling could make modifications to the studio unit bathrooms  
 22 and that the Kodak studio unit allows greater maneuverability than a Pantages  
 23

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24 <sup>7</sup> Ms. Ling has presented evidence that because of her disability, she cannot  
 25 afford market-rate housing. Ling Decl. ¶ 8. She has further presented  
 26 evidence that a studio unit would not provide sufficient space and privacy for  
 27 Ms. Ling to maneuver in her wheelchair, store bulky adaptive equipment, and  
 28 have the live-in caregiver she requires for assistance with daily tasks. *Id.* ¶¶  
 61-64. The bathroom layouts of the studio units are also inadequate for the  
 modifications that Ms. Ling would require to be able to use the toilet and  
 shower, modifications that would be possible in Pantages bathroom. Ling  
 Dep. 57:6-22, 75:22-25, 86:22-87:3, 87:10-17, 88:17-18; Ling Decl. ¶ 63.

1 unit because it is open. Kim Report at 14-16. Ms. Kim's statements are  
 2 contradicted by Ms. Ling's testimony as to her individualized, specific  
 3 accessibility needs. The Ninth Circuit has repeatedly emphasized that “[t]he  
 4 question of whether a particular accommodation is reasonable depends on the  
 5 individual circumstances of each case and requires a fact-specific,  
 6 individualized analysis of the *disabled individual's circumstances* and the  
 7 accommodations that might allow him to equally enjoy the rented premises.”  
 8 *Mejia v. Comonfort*, No. 10-05767, 2010 WL 5818288, at \*5 (C.D. Cal. Nov.  
 9 15, 2010) (internal quotation marks omitted, citing *Vinson v. Thomas*, 288  
 10 F.3d 1145, 1154 (9th Cir. 2002); *Zukle v. Regents of Univ. of Cal.*, 166 F.3d  
 11 1041, 1048 (9th Cir. 1999)). “The reasonable accommodation inquiry is  
 12 highly fact-specific, requiring case-by-case determination” based on the  
 13 specific accessibility needs of the individual plaintiff. *Mobile Home I*, 29 F.3d  
 14 at 1418.

15 RedRock's only evidence on the issue of whether the requested  
 16 accommodation is necessary is the Kim Report. The Kim Report does not and  
 17 cannot establish the absence of material disputes about Ms. Ling's need for a  
 18 Pantages unit because it does not address or consider Ms. Ling's specific and  
 19 personalized accessibility needs, including the need for sufficient  
 20 maneuverability, storage space for adaptability equipment, and privacy for her  
 21 caregiver. Ling Dep. 53:17-18 (“[E]verybody's disability is different.”),  
 22 70:15-18; 77:5-6 (testifying that the size and maneuverability of the Pantages  
 23 layout is greater), 104:20-22 (“[W]hat may work for one person in a  
 24 wheelchair may not work for me, and vice versa.”). The Kim Report  
 25 expresses only general opinions about the comparative maneuverability of the  
 26 different unit types and is contradicted by Ms. Ling's testimony about her  
 27 specific needs. A reasonable jury could credit Ms. Ling's personal testimony  
 28 about her specific needs over the Kim Report's generalized conclusions and

1 find that by denying Ms. Ling the ability to rent a Pantages unit through the  
2 affordable housing program, RedRock is denying her an equal opportunity to  
3 use and enjoy a dwelling at The Lofts. *See Giebeler*, 343 F.3d at 1155-56.

4 Moreover, to the extent the Kim Report finds that the Mayan and Kodak  
5 units are comparable to the Pantages unit in terms of space and  
6 maneuverability, Ms. Ling was not offered either of these units types. She  
7 was offered the smallest studio unit type, the Greek floor plan, with only 580  
8 square feet. Ex. C to Kim Report (Dkt. 149-3); Ling Dep. 84:9-22; Legacy  
9 Statement of Uncontroverted Facts ¶ 13.

10 For the same reasons, a reasonable jury could find that the requested  
11 accommodation would enable Ms. Ling to have an equal opportunity to use  
12 and enjoy a dwelling at The Lofts by allowing her to rent a more accessible  
13 Pantages unit at a rate that she can afford on her severely restricted income.

14 **III. RedRock Has Not Established the Absence of Any Genuine  
15 Disputes Regarding the Reasonableness of the Requested  
Accommodation**

16 RedRock contends that the accommodation requested by Ms. Ling is  
17 not reasonable because it would fundamentally alter the terms of the  
18 affordable housing program at The Lofts and would pose an undue financial  
19 burden on RedRock by depriving it of the rental revenue it now receives from  
20 renting all of its Pantages unit at market rate. RedRock's evidence is  
21 insufficient to establish the absence of any disputed facts supporting these  
22 contentions.

23 Under Section 504 of the Rehabilitation Act, Ms. Ling bears "the initial  
24 burden of producing evidence that a reasonable accommodation was possible."  
25 *Vinson*, 288 F.3d at 1154. "Once evidence of the possibility is produced, the  
26 burden shifts to the other party to produce rebuttal evidence that the requested  
27 accommodation is not reasonable." *Giebeler*, 343 F.3d at 1156 (citing *Vinson*,

28

1 288 F.3d at 1154).<sup>8</sup>

2       A housing provider may not refuse to grant a requested accommodation  
 3 that is necessary to afford a person with disabilities an equal housing  
 4 opportunity unless it can show that the accommodation would impose an  
 5 undue hardship or would make fundamental or substantial alterations to the  
 6 defendant's program. *Giebeler*, 343 F.3d at 1155; *Mark H. v. Hamamoto*, 620  
 7 F.3d 1090, 1098 (9th Cir. 2010). "An accommodation is reasonable if it is  
 8 'reasonable on its face, i.e., ordinarily or in the run of cases.'" *Mark H.*, 620  
 9 F.3d at 1098 (quoting *Barnett*, 535 U.S. at 402).

10     The Ninth Circuit has made clear that housing providers may be  
 11 required to incur reasonable costs to accommodate a plaintiff's disability:  
 12 "[T]he history of the [Fair Housing Amendments Act] clearly establishes that  
 13 Congress anticipated that landlords would have to shoulder certain costs."  
 14 *Mobile Home I*, 29 F.3d at 1416; *see also Shapiro v. Cadman Towers*, 51 F.3d  
 15 328, 334-35 (2d Cir. 1995) ("[R]easonable accommodation under section 504  
 16 can and often will involve some costs" to housing providers (internal  
 17 quotation marks omitted)).

18     Like the necessity inquiry, the reasonableness of a requested  
 19 accommodation is fact-specific, dependent on the individual circumstances of  
 20 the parties to each case. *See, e.g., Giebeler*, 343 F.3d at 1156 (describing  
 21 burden-shifting analysis and holding that even "[i]f the plaintiff cannot make  
 22 the initial showing that the requested accommodation is reasonable in the run  
 23 of cases, he 'nonetheless remains free to show that special circumstances

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24  
 25     <sup>8</sup> Noting that a slightly different framework applies to reasonable  
 26 accommodation claims under the Americans with Disabilities Act, in *Giebeler*  
 27 the Ninth Circuit left open the question of which burden-shifting framework  
 28 applies to a reasonable accommodation claim under the Fair Housing Act.  
 343 F.3d at 1156-57 (concluding that "[e]ither description of the burden  
 allocation leads to the same result in this case"). Here, as in *Giebeler*, the  
 framework is not outcome determinative.

1 warrant a finding that . . . the requested “accommodation” is “reasonable” on  
 2 the particular facts.’ . . . [C]ase-specific circumstances may make it reasonable  
 3 for certain defendants to make accommodations even where such  
 4 accommodations are not reasonable in most cases.” (quoting *Barnett*, 535  
 5 U.S. at 405)); *see also* *Mark H. v. Hamamoto*, 849 F. Supp. 2d 990, 1004 (D.  
 6 Haw. 2012) (holding that reasonableness is fact-specific and that a defendant’s  
 7 “mere speculation that a suggested accommodation is not feasible falls short  
 8 of the reasonable accommodation requirement”’ (alteration omitted, quoting  
 9 *Duvall v. Cty. Of Kitsap*, 260 F.3d 1124, 1139 (9th Cir. 2001)).

10 As the owner of The Lofts, RedRock clearly has authority to rent an  
 11 available Pantages unit to Ms. Ling at any rent it chooses. The requested  
 12 accommodation is therefore “possible.” *See Giebel*, 343 F.3d at 1158  
 13 (holding that plaintiff “made the necessary initial showing that the requested  
 14 accommodation was reasonable” by identifying a practicable solution that was  
 15 within defendant’s authority to grant).

16 The burden thus shifts to RedRock to show that granting the  
 17 accommodation would cause hardship to RedRock. RedRock has not shown  
 18 the absence of disputed facts material to this inquiry. RedRock’s assertion that  
 19 the requested modification will fundamentally alter its affordable housing  
 20 program is an affirmative defense, for which RedRock bears the burden of  
 21 proof, and is “intensively fact-based.” *Lentini v. Cal. Ctr. for the Arts*,  
 22 *Escondido*, 370 F.3d 837, 845 (9th Cir. 2004); *Martin v. PGA Tour, Inc.*, 204  
 23 F.3d 997, 1001 (9th Cir. 2000). RedRock asserts that it cannot substitute a  
 24 Pantages unit for an affordable studio unit because its covenant with the CRA  
 25 dictates the number and types of units that must be rented at affordable rates.  
 26 Be that as it may, RedRock has offered no evidence to show that it would be  
 27 unduly burdensome to seek a waiver from the CRA that would allow RedRock  
 28 to make the substitution in order to accommodate Ms. Ling’s disability or to

1 negotiate a limited modification to the covenant. Nor has it shown how  
 2 renting one Pantages unit at an affordable rate would “alter the essential  
 3 obligations of tenancy . . . (such as appropriate behavior and care of the  
 4 premises)”. *Giebeler*, 343 F.3d at 1157 (defining fundamental alteration).

5 RedRock cannot show that it would suffer a financial hardship if it were  
 6 to substitute a Pantages unit for one of the affordable studio units, pursuant to  
 7 a modified agreement with the CRA. If RedRock allowed Ms. Ling to rent a  
 8 Pantages unit at the affordable rate set for a Kodak unit and rented the Kodak  
 9 unit at market rate, the net rental revenue loss would be \$25 monthly (\$2410-  
 10 \$2385). Nichols Decl. ¶ 11. No jury would deem a \$25-per-month loss a  
 11 financial hardship for the owner of an upscale high-rise apartment building  
 12 with almost 300 units.

13 Even without a modification to the covenant, RedRock could still offer  
 14 Ms. Ling a Pantages unit at an affordable rate, in other words rent a 29<sup>th</sup> unit at  
 15 an affordable rate. RedRock asserts that renting one additional unit at an  
 16 affordable rate would result in a rental revenue loss of up to \$1572 per month.  
 17 RedRock Mem. (Dkt. 149-1) at 13. RedRock has offered no evidence,  
 18 however, to show that this rental revenue loss would pose an undue financial  
 19 hardship to RedRock. Absent any evidence of RedRock’s financial  
 20 circumstances, for example the monthly operating expenses and gross profits  
 21 for The Lofts, RedRock has not presented sufficient facts to establish the  
 22 absence of any genuine disputes as to whether renting a Pantages unit to Ms.  
 23 Ling at an affordable rate would be so financially burdensome to RedRock  
 24 that it should not be required to grant Ms. Ling’s requested accommodation.  
 25 Whereas a \$1572 monthly shortfall might be an undue burden for an  
 26 individual tenant or to a landlord renting just a few units, RedRock must offer  
 27 more to show that no reasonable jury could find it a manageable and  
 28 reasonable expense for this business entity owner of a major multi-family

1 housing development. *See Mark H.*, 849 F. Supp. 2d at 1004 (holding that  
 2 defendant must present more than “speculation that a suggested  
 3 accommodation is not feasible”).

4 The reasonableness of Ms. Ling’s request finds further support in the  
 5 implementing regulations for the Rehabilitation Act. 24 C.F.R. § 8.26 obliges  
 6 RedRock to provide accessible units “in a sufficient range of sizes and  
 7 amenities so that a qualified individual with handicaps’ choice of living  
 8 arrangements is, as a whole, comparable to that of other persons eligible for  
 9 housing assistance under the same program.”<sup>9</sup> This persuasive interpretation  
 10 by HUD of a recipient’s obligations under Section 504, *see Armstrong*, 622  
 11 F.3d at 1167, is highly instructive to the reasonableness analysis here. Ms.  
 12 Ling’s requested accommodation would oblige RedRock to do nothing more  
 13 than it is already required to do—but may not actually be doing—under the  
 14 Section 504 regulations.<sup>10</sup>

## 15 CONCLUSION

16 As shown above, there are extensive and material factual disputes as to  
 17 the “necessary” and “reasonableness” elements of Ms. Ling’s reasonable  
 18 accommodation claim against RedRock. Ms. Ling therefore respectfully

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19 <sup>9</sup> The regulations further provide that recipients must make reasonable  
 20 accommodations for individuals with disabilities and must modify housing  
 21 policies and practices to ensure that these policies do not discriminate on the  
 22 basis of disability. 24 C.F.R. §§ 8.24, 8.33. Multi-family housing  
 23 developments constructed after 1991, like The Lofts, must furthermore be  
 24 “designed and constructed to be readily accessible to and usable by individuals  
 25 with handicaps,” and have “a minimum of five percent of the total dwelling  
 26 units . . . be made accessible for persons with mobility impairments.” 24  
 27 C.F.R. § 8.22.

28 <sup>10</sup> See also, e.g., *Save Our Valley v. Sound Transit*, 335 F.3d 932, 943-44 (9th  
 29 Cir. 2003) (“As an agency interpretation of a statute, a regulation may be  
 30 relevant in determining the scope of the right conferred by Congress.”); *Taylor*  
 31 *v. Hous. Auth. of New Haven*, 267 F.R.D. 36, 47 (D. Conn. 2010) (holding that  
 32 HUD’s Section 504 regulations provide probative interpretations of the scope  
 33 obligations imposed by the statute); *Inland Mediation Bd. v. City of Pomona*,  
 34 158 F. Supp. 2d 1120, 1144-46 (C.D. Cal. 2001) (relying on HUD regulations  
 35 to interpret scope of conduct prohibited under the Fair Housing Act).

1 requests that the Court deny RedRock's motion for summary judgment.

2 Dated: October 1, 2012

3 Respectfully submitted,

4 /s/ Jamie L. Crook

Jamie L. Crook

5 on behalf of counsel for Plaintiff

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1                   **CERTIFICATE OF SERVICE**  
2                   **CENTRAL DISTRICT OF CALIFORNIA**

3                   I hereby certify that on this 1<sup>st</sup> day of October, 2012, I filed the  
4                   foregoing Plaintiff's Opposition to RedRock NoHo Residential, LLC's Motion  
5                   for Summary Judgment and accompanying documents using the Court's  
6                   CM/ECF filing system, which shall serve as notice of such filing on all  
7                   counsel of record. I further certify that Plaintiff's Opposition to RedRock  
8                   NoHo Residential, LLC's Motion for Summary Judgment will be served  
9                   according to law on the following party, which has not appeared in this action  
and is in default:

10                  JSM Florentine, LLC  
11                  c/o Craig D. Jones  
12                  111 N. Pass Avenue  
13                  Burbank, CA 91505

14                  \_\_\_\_\_  
15                  /s/ Jamie L. Crook  
16                  Jamie L. Crook

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